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STAFF REPORT: DETERMINATION OF APPEALABILITY**AND****SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NO.: A-2-HMB-01-011

APPLICANTS: Keenan Land Company

LOCAL GOVERNMENT: City of Half Moon Bay

PROJECT LOCATION: Beachwood Subdivision at the intersection of the proposed Bay View Avenue and Highway One between Terrace and Grand View Avenues, inland of Highway One, Half Moon Bay, San Mateo County.

PROJECT DESCRIPTION: Subdivision of a 24.7-acre parcel into 83 residential lots and construction of 80 detached single-family residences, and installation of new infrastructure including roads, utilities, and a traffic signal.

APPELLANTS: Commissioners Sara Wan and Christina L. Desser
Mr. Michael Ferreira and Mr. Patrick O'Brien

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

STAFF RECOMMENDATION: Substantial Issue

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I. STAFF RECOMMENDATIONS, MOTIONS AND RESOLUTIONS

A. Determination of Appealability

Staff recommends that the Commission determine that it has jurisdiction over this appeal.

1. Motion

I move that the Commission find that it has jurisdiction of this appeal under Public Resources Code section 30603 and that it adopt the findings to support its jurisdiction that are set forth in the staff report.

2. Staff Recommendation that PDP 10-98 is Appealable:

Staff recommends a YES vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution and to proceed on the appeal. A majority of the Commissioners present is required to approve the motion.

3. Resolution

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code section 30603(a)(2) and adopts the findings to support its jurisdiction that are set forth in the staff report.

B. Substantial Issue

Pursuant to Sections 30603(b) and 30625(b)(2) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

1. Motion

I move that the Commission determine that Appeal No. A-2-HMB-01-011 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

2. Staff Recommendation

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

3. Resolution to Find Substantial Issue

The Commission hereby finds that Appeal No. A-2-HMB-01-011 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program (LCP).

II. FINDINGS AND DECLARATIONS ON DETERMINATION OF APPEALABILITY

On March 20, 2001, the applicant requested that the City obtain from the Commission a determination on whether the CDP approved on March 20, 2001 by the City Council for the Beachwood development is administratively appealable to the Commission. (Exhibit 1.) On April 4, 2001, the applicant reiterated its request for a determination of appealability directly with the Executive Director of the Commission. (Exhibit 2.) The applicant indicated that it considered its request to trigger the requirement contained in Section 13569 of the Commission's regulations that the Executive Director respond to a request from a local government for a determination of appealability within two days of the request. On April 6, the City telephoned the Commission requesting that the Executive Director provide a determination of whether the City's action approving PDP-10-98 is appealable to the Commission. On April 6, the Executive Director agreed with the City's determination that the City's action approving the Beachwood development on March 20, 2001 is appealable to the Commission. (Exhibit 3.) The Commission notes that the Executive Director's determination is consistent with the determination of appealability made by the City at the time of the initial application as well as the determination of appealability made by the City at the time the City transmitted the Notice of Final Local Action. (Exhibits 4 and 5.)

The applicant's April 4, 2001 request to the Executive Director (Exhibit 2) raises the following issues with respect to whether the development approved by the City is appealable to the Commission:

1. A San Mateo County trial court has found that the disputed habitat areas which would be filled by the approved houses and other construction activities are not wetlands under the LCP; and
2. There is no development within 100 feet of the undisputed wetland areas on the property that the applicant concedes are wetlands within the meaning of the certified LCP.

The Commission disagrees that the two issues raised by the applicant support the applicant's contention that the City's approval of PDP 10-98 is not appealable to the Commission. As discussed below, the Commission finds that the development approved by the City of Half Moon Bay is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act because it is located within 100 feet of wetlands as defined in Section 13577 of the Commission's regulations.

Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. That section provides, in part, that:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

*(2) **Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.***

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility. [Emphasis added.]

Pursuant to Section 30330 of the Coastal Act, the Commission retains the ultimate responsibility for administering and implementing the provisions of the Coastal Act as a whole. Pursuant to Section 30333 of the Coastal Act, the Commission may adopt rules and regulations to carry out the purposes of the Coastal Act. Pursuant to this authority, the Commission adopted regulation Section 13577 to implement and give meaning to the term "wetland" contained in Sections 30121 and 30603(a)(2) of the Coastal Act. Section 13577 of the Commission's implementing regulations defines wetlands for purposes of determining appealability of a local action to the Commission. Section 13577 states:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

...

(b) Wetlands.

*(1) Measure 100 feet landward from the upland limit of the wetland. **Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts***

or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location with, or adjacent to vegetated wetlands or deepwater habitats.¹

... [Emphasis added.]

Section 13577 of the Commission's regulations provides that wetlands includes areas where the water table is near the land surface long enough to promote the formation of hydric soils or hydrophytes. Thus, under the definition of wetlands contained in the Commission's regulations and which is utilized for purposes of determining the appealability of a local action to the Commission, areas at the Beachwood site where the water table is near the surface long enough to support the growth of plants which normally are found to grow in water or wet ground are considered wetlands in the absence of hydric soils.

The Commission notes that under one possible interpretation of the certified LCP for the City of Half Moon Bay, the LCP excludes from its definition of wetlands, "vernally wet areas where the soils are not hydric."² The applicant's consultant, WRA, characterized some of the wetlands on this site as "vernally wet" and did not find any evidence of hydric soils at any of its five data sampling points. Based on this information, the San Mateo County Superior Court agreed with the applicant that the these areas were excluded from the definition of wetlands under the certified LCP. However, Section 13577 does not contain an exclusion for vernal wet areas where the soils are not hydric. Moreover, the Commission has disagreed with the applicant's assertion that the LCP provides for this exclusion.³ In any event, the trial's court's determination that the LCP excludes some of these potential wetland areas from the definition of wetlands is not relevant to the issue of whether the City's approval is appealable to the Commission because Section 13577 of the Commission's regulations, rather than the certified LCP, provides the definition of wetlands for purposes of determining appealability to the Commission. Accordingly, regardless of whether the Commission disagrees with the trial court's decision, the LCP definition of wetland is not the basis for determining whether development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act; rather, Section 13577 of the Commission's regulations provides the definition of wetlands for the purposes of determining appealability to the Commission. Therefore, if the City of Half Moon Bay's approval includes development within 100 feet of wetlands which satisfy the criteria set forth in Section 13577 of the Commission's regulations, the locally approved coastal development permit is appealable to the Commission.

¹ 14 CCR §13577

² Half Moon Bay LUP, Appendix A, p. 226.

³ The Commission does not agree with the trial court's interpretation of the definition of wetlands contained in the City's certified LCP. The Commission instead interprets the definition of wetlands contained in the City's certified LCP in a manner consistent with the definition of wetlands contained in the Coastal Act and its implementing regulations. (See March 20, 2000 letter to City of Half Moon Bay from Ralph Faust attached as, Exhibit 6.)

A. Undisputed Wetland Areas

Notably, the property contains undisputed wetlands that the applicant agrees meet the definition of wetlands in the Coastal Act and Section 13577 of the Commission's regulations as well as the definition contained in the certified LCP. The applicant concedes that the property contains these wetlands as indicated on the wetland delineation dated October 1999, submitted to the City as part of the CDP application, and prepared by Dr. Michael Josselyn of Wetlands Research Associates. (See Exhibit 2.)

However, the applicant argues that there is no development within a 100 feet of the "undisputed wetlands" as required by Coastal Act Section 30603(a)(2). The Vesting Tentative Map is designed such that all of these undisputed wetlands would be located on one of the new lots that would be created by the subdivision approved by the City. The lot is designated as open space and does not appear to include any residential construction within 100 feet of these wetlands.

However, the "development" approved by the City includes a subdivision of the entire property. Section 30106 of the Coastal Act and Appendix A of the Half Moon Bay certified LUP defines development, in part, as:

"Development" means, on land ... change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code...

Thus, the definition of "development" contained in the Coastal Act includes more than just physical development such as residential construction; the definition also includes non-physical changes such as changes to the density and intensity of use of land.

The overall subdivision of the entire property approved by the City of Half Moon Bay constitutes "development" under both the Coastal Act and the City of Half Moon Bay certified LCP. The subdivision approved by the City of Half Moon Bay will change the intensity and density of use of the entire property, including the area that contains the undisputed wetlands. In other words, as approved by the City, "development" within the meaning of the Coastal Act and LCP will occur on the entirety of this property. Therefore, the Commission finds that since the entire property, including both the disputed and undisputed wetland areas, is subject to subdivision, there is development within 100 feet of a wetland as required by Section 30603(a)(2) of the Coastal Act. Therefore, the City's action approving the coastal development permit is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

B. Disputed Wetland Areas

In addition, the project site contains several areas of disputed seasonal wetlands that are predominantly vegetated by hydrophytic wetland plant species. A preliminary

wetland delineation by Huffman & Associates⁴ identifies 17 potential wetland areas on the subdivision site. Of those 17 sites, 15 are located in areas that would be subject to construction of houses, roads, and other subdivision-related physical construction. These habitat areas were also evaluated in a subsequent delineation prepared by the applicant's consultant, Wetlands Research Associates (WRA).⁵ WRA took data from eight sampling points, five of which were in the potential wetland areas identified in the preliminary delineation. The dominant vegetation within each of these potential wetland areas is hydrophytes. Most of these plants are classified as facultative wet, meaning "*plants that occur usually (estimated probability of > 67% to 99%) in wetlands, but also occur (estimated probability 1% to 33%) in nonwetlands.*"⁶ These areas also contain some facultative plants, which are just as likely to occur in a wetland as a non-wetland,⁷ and one area contains an obligate wetland species, which almost always occur in a wetland.⁸ None of the dominant plant species in these areas are obligate upland (found almost always in uplands⁹) or facultative upland (usually occur in upland areas¹⁰).

As stated above, the Commission relies on Section 13577 of its regulations to determine the appealability under Section 30603(a)(2) of development approved by a local government. Under this definition, an area can be considered to be a wetland if one or more of the following wetland characteristics are present: hydrology, hydrophytes, or hydric soils. All of the five data points selected by WRA that were in the wetland areas identified in the preliminary delineation showed that the dominant vegetation in those areas consisted mostly of facultative wet species and did not include any facultative upland species. These facultative wet species are hydrophytes¹¹. Thus, the Commission finds that these areas are wetlands pursuant to Section 13577 of the Commission's regulations because of the ability of these areas to support the growth of plants which are normally found to grow in water or wet land. Therefore, the property contains several areas that are wetlands pursuant to Section 13577 of the Commission's regulations.

Under the approved project, those disputed LCP wetlands, which satisfy the criteria set forth in Section 13577, would be subject to construction of houses, roads, and other subdivision-related physical construction. Accordingly, the City of Half Moon Bay's approval also includes physical development within 100 feet of wetlands satisfying the criteria in Section 13577 and the locally approved coastal development permit is also appealable to the Commission on this independent basis.

⁴ Letter dated March 11, 1999, Terry Huffman to Joan Lamphier, Lamphier & Associates.

⁵ Beachwood Subdivision, Half Moon Bay, CA, Half Moon Bay Local Coastal Plan Wetland Delineation Study, Wetland Research Associates, Inc., December 1999, Figure 12.

⁶ Corps of Engineers Wetland Delineation Manual, January 1987, p 18.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ The Commission permit staff consulted with the Commission's staff biologist and he agreed with the permit staff's conclusion that the areas analyzed by WRA are wetlands under the Coastal Act.

The Commission finds that the development approved by the City of Half Moon Bay is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act because it is located within 100 feet of wetlands as defined in Section 13577 of the Commission's regulations.

III. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Location and Site Description

The approved development is located on an 1,075,932 square-foot (24.7 acre) lot (APN 048-280-020) located on the east side of Highway One between Terrace and Grandview Avenue, in the City of Half Moon Bay (Exhibit 7). The property is zoned R-1-B-2 (Single Family residential with a 7,500 square-foot lot size minimum). The lots to the south of the site are developed with single-family residences and the lots to the north and east (Dykstra Ranch/Pacific Ridge) are undeveloped but are zoned for residential and planned unit development. Finally, Highway One is immediately west of the project site.

At the western edge of the property (adjacent to Highway One), the property elevation is approximately 50 feet Mean Sea Level (MSL), rising to approximately 100 feet MSL at the eastern edge of the project site. The only visible drainage features on-site are a remnant stock pond and a small seasonal drainage at the southeastern corner of the property, which flows onto the site from the east and into an inlet structure and culvert. Although this portion of the site exhibits wetland characteristics, the City determined that the area is not a wetland under the LCP. This issue is discussed in the Habitat Section below. In addition, eucalyptus and cypress trees exist on small portions of the central and southeastern areas of the project site.

B. Project Description

The approved development includes the subdivision of a 27.7-acre parcel into lots for 83 detached single-family homes plus 1.26 acres of open space and 0.42 acres of park. The 83 lots average approximately 7,500 square feet in size and are to be developed with one- and two-story houses. The City's approval of the subdivision includes the construction of 80 individual houses.

C. Appeal Process

1. Local Government Action

On June 30, 1990, the City of Half Moon Bay approved a Vesting Tentative Map for an 83-lot subdivision. The City of Half Moon Bay approved the Vesting Tentative map in 1990 prior to the certification of the City's LCP.

On March 11, 1999, after the 1996 certification of the City's LCP, the City of Half Moon Bay's Planning Commission denied a coastal development permit for the subdivision and residential units.

On March 17, 1999, the applicant, Keenan Land Company, filed an appeal of this denial with the Half Moon Bay City Council.

On March 21, 2000, the City Council denied the request for approval of the project.

On May 19, 2000, the applicant filed a complaint in San Mateo County Superior Court to overturn the City's denial of the coastal development permit.

On February 22, 2001, the San Mateo County Superior Court ordered the City to issue a coastal development permit consistent with the 1990 Vesting Tentative Map.

On March 20, 2001, the City Council approved the coastal development permit attaching the conditions of the 1990 Vesting Tentative Map approval as conditions to the coastal development permit (Exhibit 5).

2. Filing of Appeal

On March 30, 2001, the Commission received notice of the City's final action approving a coastal development permit for the project (Exhibit 5). The Commission's appeal period commenced the following working day and ran for ten working days thereafter (March 31, 2001 through April 13, 2001). On April 13, 2001, the Commission received an appeal from Commissioners Wan and Desser and an appeal from Michael J. Ferreira and Patrick O'Brien (Exhibits 8 and 9). Following receipt of each of these appeals, the Commission mailed a notification of appeal to the City and the applicant (Exhibit 5).

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date is May 29, 2001. The only Commission meeting within the 49-day period is May 7-11, 2001. In accordance with the Commission's regulations, on April 16, 2001, staff requested all relevant documents and materials regarding the subject permit from the City, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local file on April 24, 2001.

3. Appeals Under the Coastal Act

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a

coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the “principal permitted use” under the certified LCP. Finally, developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The approved development is located within 100 feet of a wetland, and thus meets the Commission’s appeal criteria in Section 30603 of the Coastal Act. Pursuant to Sections 30603 and 30604 of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or a subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program.

D. Standard of Review

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission’s regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

However, none of these factors is determinative of the substantial issue question. If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

E. Substantial Issue Summary

The appeal filed by Commissioners Wan and Desser is hereby incorporated in its entirety as if set forth in full (Exhibit 8). The Commissioners' appeal includes the following contentions:

- The approved development will adversely affect access to the coast through its cumulative effects on traffic congestion of Highways 1 and 92, which are identified as primary access routes in the LCP.
- The approved development allows for fill of wetlands in a manner inconsistent with the habitat protection policies of the LCP.
- The approved development would disrupt environmentally sensitive habitat areas (ESHA) and does not conform to the ESHA policies of the LCP.
- The approved development does not conform to the water quality protection policies of the LCP.
- The approved development interferes with views of scenic coastal areas and does not conform to the visual policies of the LCP.
- The Coastside County Water District does not have adequate capacity within its water transmission system to support the approved development.

The appeal filed by Michael J. Ferreira and Patrick O'Brien contends (Exhibit 9):

- The approved development does not conform to the wetland protection policies of the LCP.
- The approved development does not conform to the ESHA policies of the LCP.
- The approved development does not have adequate road service.
- The approved development interferes with views of scenic coastal areas and does not conform to the visual policies of the LCP.

- The approved development will adversely affect access to the coast through its cumulative and regional effects on traffic congestion.
- The approval is inconsistent with the requirements of CEQA.

F. Appellants Contentions that Raise Substantial Issue

1. Access to the Shoreline

a. Contentions

Appellants Wan and Desser maintain that:

The City of Half Moon Bay LCP contains policies requiring adequate road capacity to serve new development and to minimize impacts of development to traffic on Highways 1 and 92. ... [T]he City's LUP adopts Coastal Act Sections 30210, 30250 and 30252. These policies require that development shall not interfere with the public's ability to access the coast and shall only be approved in areas with adequate public services.

Road access to the Mid-Coast region of San Mateo County including the City of Half Moon Bay is limited to Highways 1 and 92. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. ... The extreme traffic congestion existing on Highways 1 and 92 significantly interferes with the public's current ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with these policies.

....

The only mitigation provided regarding traffic impacts of the Beachwood development pursuant to the City's action is the installation of the traffic signal where the approved subdivision access road will intersect Highway One and the payment of the City's standard traffic mitigation fee of approximately \$1,600 per residence. ... According to the Regional Transportation Plan, even with the maximum contemplated investment in regional highway and transit improvements totaling \$3.2 billion, the volume of traffic on Highway One and 92 in the Mid-coast Region will continue to greatly exceed capacity. ... Therefore, the approved development is inconsistent with LUP Policies 9-2, 9-4 and 10-4 and Coastal Act Policies 30210, 30250, and 30252, which are incorporated into the City's LCP by LUP Policy 1-1.

Appellants Ferreira and O'Brien contend that:

Regional Traffic Impacts ... pose a potential detrimental effect on Coastal Access provisions of the Coastal Act and the Half Moon Bay Local Coastal Program. The project contains no mitigation for the fact that its traffic would substantially impact a situation which is already beyond capacity, particularly as it relates to the ability of Californians to visit the coast, view the coast, and access the coast on weekends and holidays.

b. Applicable Policies

LUP policies numbers 9-2 and 9-4, contained in the Development chapter of the Half Moon Bay LCP (LUP Chapter 9), limit the City's ability to approve new development, including subdivisions, to those situations where there is adequate services, including roads, to support the development. Pursuant to LUP Policy 9-4, lack of adequate services shall be grounds for denial of the project or a reduction in otherwise allowable density. In addition, policy 10-4 of the Public Works Chapter of the Half Moon Bay LUP (Chapter 10) requires that limited capacity be reserved for priority uses, such as public access to the coast, under the plan and also requires the City to avoid overloading existing public works services. In addition, Coastal Act policies 30210, 30250, and 30252, which are incorporated into the LCP by LUP Policy 1-1, establish recreational use of the coast as a priority use and require new development to maximize access and recreation opportunities, minimize cumulative effects on these resources, and identify transportation issues as a concern for access to the coast.

c. Discussion

The City's coastal development permit authorizes the creation of 83 new lots and construction of 80 new residential units. The project site is located immediately east of Highway One and less than a mile north of Highway 92, both of which are primary coastal access routes. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. As a result, the level of service on the highways at numerous bottleneck sections is currently and will in the future continue to be rated as LOS F. LOS F is defined as heavily congested flow with traffic demand exceeding capacity resulting in stopped traffic and long delays. This level of service rating system is used to describe the operation of both transportation corridors as well as specific intersections. LOS F conditions are currently experienced at certain intersections and at bottleneck sections of both highways during both the weekday PM peak-hour commuter period and during the weekend mid-day peak. The extreme traffic congestion existing on Highways 1 and 92 significantly interferes with the public's current ability to access the area's substantial public beaches and other visitor serving coastal resources.

In its February 2001 action approving the Pacific Ridge subdivision, another development in the vicinity of the Beachwood subdivision, the Commission raised a

concern that in light of both the current and projected traffic levels on the area highways, a new subdivision resulting in a net increase in legal lots in the San Mateo County Mid-coast Region would have significant adverse cumulative impacts to regional traffic congestion. In accordance with the policies of the Half Moon Bay LCP that require new development to be served by adequate public services and that protect the public's rights to access the coast by reserving service capacity for that priority use, the Commission required as a condition of approval for the Pacific Ridge project that the applicant retire the development rights on an equivalent number of existing legal lots within the region. Only through this measure was the Commission able to find the project consistent with the Half Moon Bay LCP.

The Beachwood development approved by the City will increase traffic congestion on these coastal access routes and add to the existing impact on access to the coast. Although the coastal development permit provides for mitigation of traffic impacts, these mitigation measures are inadequate to address the cumulative effect on access to the coast. The only mitigation the City provided for traffic impacts of the Beachwood development is the installation of the traffic signal where the approved subdivision access road will intersect Highway One and the payment of the City's standard traffic mitigation fee of approximately \$1,600 per residence. The City's action does not specify how this mitigation fee will be spent or how this mitigation fee is sufficient to address either the local or the regional cumulative impacts of the development. Furthermore, the Commission has not certified the standard traffic impact mitigation fee provisions of the City's municipal code as adequate to carry out the requirements of the Coastal Act or the Certified LUP. According to the Regional Transportation Plan, even with the maximum contemplated investment in regional highway and transit improvements totaling \$3.2 billion, the volume of traffic on Highway One and 92 in the Mid-coast Region will continue to greatly exceed capacity. Thus, the mitigation fee required as a term of the City's approval is inadequate to avoid or offset the cumulative traffic impacts that will result from the approved increase in the supply of legal lots in the region.

The Half Moon Bay LCP provides for the protection of coastal access to the local beaches and prevents the approval of new development that is supported by existing services including roads. In addition, the LCP reserves capacity of public works facilities, including roads, for high priority coastal uses, such as recreation and access to the shoreline. As stated above, the approved permit, as conditioned, does not adequately mitigate all significant cumulative adverse impacts to traffic congestion. There is currently inadequate road capacity to support existing and approved development. In addition, the approved coastal development permit increases demands on road capacity for residential uses, which is not a high priority coastal use. In addition to local traffic impacts on Highway One that will result from the approved development, the approved increase in traffic resulting from the construction of 80 new residential units will have significant adverse cumulative impacts on regional traffic congestion. As a result, the approved development will significantly interfere with the public's ability to access the coast.

In conclusion, the approved coastal development permit authorizes an 83-lot subdivision and the construction of 80 residential units. This subdivision will increase

demand on already over-capacity coastal access roads, mainly Highways 1 and 92. The approved coastal development permit does not provide sufficient mitigation for this traffic impact, and thus the project will adversely affect coastal access. Therefore, the Commission finds that the appeal raises substantial issues with respect to the LCP's new development and public works and access policies.

2. Habitat

a. Contentions

Appellants Wan and Desser maintain that (Exhibit 3):

The approved project would result in the fill of wetlands.... The City's approval did not evaluate the project's effects on these wetland resources contrary to Zoning Code Section 18.20.070. LUP Policies 3-2, 3-3, 3-11, 3-12 and 3-22 prohibit any uses that would have significant adverse impacts on sensitive habitat areas, require any development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, require, at a minimum, a 100-foot buffer from wetlands, ponds, and other wet areas, and severely restrict uses within buffer zones. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Sections 30230-30233 and 30240, which also require that development protect the biological productivity and quality of coastal waters, wetlands and sensitive habitat areas.

Appellants Ferreira and O'Brien contend that (Exhibit 4):

- The Project contains a large horseshoe shaped excavation.... [T]his depression contains wetland plants which are not accounted for in the Applicant's studies, but are partially accounted for in the City's studies.*
- ... [W]etland findings ... are not consistent with local lore and memory.... The adjacent Glencree wetland vegetation currently visible was once abundant evidence on both parcels on overhead photos of the Beachwood and Glencree sites*
- The Beachwood parcel has been contaminated by the substantial importation of construction soils.... The large scale of this importation has had the detrimental effect of not only covering areas which may have been historically hydric but also altering the topography and drainage patterns.*
- The project has been further altered by aggressive disking (deep plowing) in recent years ... which not only inhibits the formation of significant wetland plants but, in this case, intermixes imported topsoil with native topsoil.*

b. LCP Standards

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

3-1 Definition of Sensitive Habitats

- (a) *Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet one of the following criteria: (1) habitats containing or supporting "rare and endangered" species ..., (2) all perennial and intermittent streams and their tributaries, ... (6) lakes and ponds and adjacent shore habitat, ...*

Such areas include riparian areas, wetlands, ..., and habitats supporting rare, endangered, and unique species.

LUP APPENDIX A: Special Definitions...WETLAND...

Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

Zoning Code Sec. 18.02.040 Definitions

...Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.

Zoning Code Sec. 18.38.020 Coastal Resource Areas. The Planning Director shall prepare and maintain maps of all designated Coastal Resource Areas within the City. Coastal Resource Areas within the City are defined as follows:...

As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-

made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

3-3 Protection of Sensitive Habitats

- (a) Prohibit any land use and/or development which would have significant adverse impacts on Sensitive Habitat areas.*
- (b) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the Sensitive Habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.*

3-4 Permitted Uses

- (a) Permit only resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats.*
- (b) In all sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.*

3-5 Permit Conditions

- (a) Require all applicants to prepare a biologic report by a qualified professional selected jointly by the applicant and the City to be submitted prior to development review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur.*

The report shall consider both any identified sensitive habitats and areas adjacent. Recommended uses and intensities within the sensitive habitat area shall be dependent on such resources, and shall be sited and designed to prevent impacts which would significantly degrade areas adjacent to the habitats. The City and the applicant shall jointly develop an appropriate program to evaluate the adequacy of any mitigation measures imposed.

- (b) When applicable, require as a condition of permit approval, the restoration of damaged habitat(s) when, in the judgment of the Planning Director, restoration is partially or wholly feasible.*

Zoning Code Sec. 18.38.035 Biological Report.

A. When Required. The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any

Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland...

B. Report Contents. In addition to meeting the report requirements listed in Section 18.35.030, the Biological Report shall contain the following components:

1. Mapping of Coastal Resources. The Biological Report shall describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site.

2. Description of Habitat Requirements.

a. For Rare and Endangered Species: a definition of the requirements of rare and endangered organisms, a discussion of animal predation and migration requirements, animal food, water, nesting or denning sites and reproduction, and the plant's life histories and soils, climate, and geographic requirements;

b. For Unique Species: a definition of the requirements of the unique organism; a discussion of animal food, water, nesting or denning sites and reproduction, predation, and migration requirements; and a description of the plants' life histories and soils, climate, and geographic requirements.

C. Distribution of Report. Any Biological Report prepared pursuant to this Title shall be distributed to the US Fish and Wildlife Service, the Army Corps of Engineers, the California Coastal Commission, the State Department of Fish and Game, the Regional Water Quality Control Board, and any other Federal or State agency with review authority over wetlands, riparian habitats, or water resources.

1. The Biological Report shall be transmitted to each agency with a request for comments from each agency with jurisdiction over the effected resource on the adequacy of the Report and any suggested mitigation measures deemed appropriate by the agency.

2. Included within the transmittal of the Biological Report to the various agencies shall be a request for comments to be transmitted to the Planning Director within 45 days of receiving the Report.

Zoning Code Sec. 18.38.055 Environmental Impact Reports.

At the discretion of the Planning Director, a project applicant may use the analysis contained in an Environmental Impact Report prepared under the California Environmental Quality Act or an Environmental Impact Statement prepared under the federal Environmental Policy Act to fulfill the requirements of this Title.

A. *Use of Environmental Impact Report on Project.* The Planning Director may allow an applicant to substitute the analysis in an Environmental Impact Report on a project for a Geological, Biological or Archaeological Report on the same project, if the Planning Director determines that the Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Title...

B. *Use of Previously Prepared Environmental Impact Report.* The Planning Director may accept the information and analysis contained in a previously prepared Environmental Impact Report required under the California Environmental Quality Act in lieu of a new Geological, Biological, or Archaeological Report if the Planning Director determines that:

1. *The Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Chapter, and*

2. *The Environmental Impact Report was prepared for either a previous project on the project site or a project on a directly adjoining site.*

3. *In order to use any previously prepared Biological Report pursuant to this Section, the Biological Report must have been a part of a Certified Final EIR that was accepted as complete and adequate no more than one year prior to the date of submittal...*

3-9 Permitted Uses in Riparian Corridors

- (a) *Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.*
- (b) *When no feasible or practicable alternative exists, permit the following uses: ... (3) bridges when supports are not in significant conflict with corridor resources, ..., (5) improvement, repair or maintenance of roadways or road crossings, ...*

3-11 Establishment of Buffer Zones

- (a) *On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.*
- (b) *Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and feet from the midpoint of intermittent streams.*

- (c) *Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.*

3-12 Permitted Uses in Buffer Zones

- (a) *Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, ... (5) no new parcels shall be created whose only building site is in the buffer area except for parcels created in compliance with Policies 3.3, 3.4 and 3.5 if consistent with existing development in the area and if building sites are set back 20 feet from the limit of riparian vegetation or if no vegetation 20 feet from the bank edge of a perennial and 20 feet from the midpoint of an intermittent stream.*

c. Biological Report

Appellants Wan and Desser contend that the project is located in an area that potentially supports several sensitive species and that the biological surveys for sensitive species are out of date or not sufficient to support the conclusion that sensitive species do not exist on this site. In addition, appellants Wan and Desser argue that the biological report does not include an analysis of raptor habitat on the site.

The accurate and complete identification of coastal resources is the foundation for complying with the Half Moon Bay LCP. If the delineation of such resources is inadequate, there can be no assurance that any project on that site conforms to the other LCP Standards for sensitive habitats. LUP policy 3-3 and 3-5 and Zoning Code Section 18.15.035, which implement these policies, require a Biologic Report to identify sensitive resources. The Biological report for the approved project contains a report by Harding Lawson Associates, entitled *San Francisco Garter Snake Survey and Riparian Mitigation Plan, Beachwood Subdivision, Half Moon Bay*, which analyzes the habitat value of the site for the snake. However, this survey was done in 1989 and did not include live trapping. The only survey of the site conducted for the San Francisco garter snake was prepared for the applicant and conducted in 1989 by Harding Lawson Associates. That report states that all suitable habitats were evaluated using Dr. S. McGinnis' evaluation system. A similar survey was conducted for the Ailanto development adjacent to the Beachwood project site. In its review of the Ailanto permit, the Commission also raised concerns that the biological report's evaluation of endangered species habitat was inadequate because it was old (prepared in 1986) and did not include an attempt to identify San Francisco garter snakes on the site.

In addition, the biological report does not include surveys for the red-legged frog. All that is included is a letter from a wildlife biologist (Jeffery B. Froke, Ph.D., March 10,

1999) that states that, in the biologist's opinion, the area does not support the frog. That opinion does not appear to be based on scientific surveys or trapping. Thus, the conclusions of the biological report, with respect to the frog, were based on a simple walk through of the project site. There does not appear to be any detailed habitat surveys or attempts at identifying individual frogs. Staff of the U.S. Fish and Wildlife Service has indicated that these species are extremely difficult to detect and that a simple transect survey is not sufficient to document the presence or absence of the snake (pers. com. Larson 6/16/00). Both the San Francisco garter snake and the California red-legged frog are extremely rare and shy and quickly seek cover when approached. Therefore, surveys must include attempts at live trapping, consistent with the Service's protocols, in order to accurately evaluate the project habitat value.

The question of the project sites' value for these sensitive species is further complicated by a letter written by the U.S. Fish and Wildlife Service (dated March 11, 1999, Exhibit 10). In that letter, the Service suggests the possibility of the site providing habitat for sensitive species:

Due to the presence of ponded water and chorus frogs, the Service suggests that a wetland delineation be conducted for the entire site. To avoid possible take of listed species, the Service suggests that the developer hire a qualified biologist to conduct surveys for the red-legged frog and the garter snake.

These surveys were never done. The existing biological report's consideration of garter snake and red-legged frog habitat on this site is out of date (especially for the garter snake evaluation, which is over 10 years old) and is inadequate for the purpose of determining whether the site supports or does not support federally listed species. Without a complete and up-to-date biological report, the Commission cannot determine if the project would affect these habitat resources or whether the project is consistent with the LCP's habitat policies. Therefore, the approved development raises a substantial issue of consistency with the LCP's habitat provisions.

In addition, the appellants raise concerns that the project site might provide habitat for raptors. The area includes open grasslands and tall eucalyptus trees that are suitable for raptor roosting and foraging. In addition, the site immediately east of the Beachwood property, the Ailanto subdivision, supports raptors. In its review of the coastal development permit for the Ailanto subdivision, in order to find the proposed project consistent with the standards of the certified LCP, the Commission required mitigation for impacts to those raptors. The Half Moon Bay LCP defines raptors as a unique species, and thus their habitat is an ESHA. The biological report does not provide any consideration of the area's value as raptor habitat. In light of the fact that the site has potential raptor habitat and that the adjacent property supports raptors, an analysis of raptors on this site is necessary to find this project consistent with the LCP. Since the biological report does not include an evaluation of this issue and the City's resolution approving this project does not consider the site's raptor potential, the Commission finds that the approved project raises substantial issues as to consistency with the LCP's habitat provisions.

Finally, appellants Ferreira and O'Brien raise concerns that the biological report does not consider any offsite habitat values. LUP Policy 3-5 requires the biological report to "consider both any identified sensitive habitats and areas adjacent." LCP Ordinance Sec. 18.38.035.B.1, which implements LUP Policy 3-5, specifies that the report required in conjunction with new development involving sensitive habitats must "describe and map ... existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site." Such mapping is necessary to determine any additional development constraints, for example, whether access to the site that avoids near-site wetland and riparian areas and associated buffers is feasible, and whether any buffers for offsite wetland or riparian areas would extend into the project site, possibly into areas proposed for on-site development. Without this information, the approved development does not ensure the protection of habitat consistent with the LCP's provisions protecting ESHAs. Since the biological report does not include any analysis of off-site resources, the Commission finds that the approved project raises substantial issues of consistency with the LCP's habitat provisions.

d. Identification of Wetlands

Appellants Wan and Desser contend that the approved project would result in fill of wetlands as defined by the Coastal Act, its implementing regulations, and the certified LCP. In addition, appellants Ferreira and O'Brien argue that the soils on the project site have been substantially altered by the importation of construction soil and through regular disking. In its initial review of the coastal development permit for this project, the City raised concerns about potential wetland habitat on this site. The City initially denied the coastal development permit based on the need to have further assessment of the potential wetlands. However, the applicant subsequently filed a complaint with the San Mateo County Superior Court arguing, in part, that the habitat areas in question are not wetlands under the City's LCP. One interpretation of the City's LCP is that it excludes from its definition of wetlands "vernally wet areas where the soils are not hydric." Based on the biological report contained in the record, the court found that the wetlands on the site are vernally wet areas that do not contain hydric soils and, as such, are excluded from the LCP's definition of wetlands.

The Commission believes that the Court's interpretation of the City's LCP on this issue is not the only or best interpretation of the definition of wetlands contained in the certified LCP. In a letter dated March 20, 2000 (Exhibit 6), the Commission's Chief Counsel opines that the disputed wetland areas affected by this approved development are wetlands under the LCP. In that letter, the Chief Counsel emphasizes that the City's definition of wetlands should be interpreted in a manner consistent with the Coastal Act and its implementing regulations, which do not exclude any vernally wet areas from its definition of wetlands. Under this interpretation of the wetland definition contained in the certified LCP, since the LCP's definition of wetlands includes areas that support wetland hydrology, hydric soils, **or** hydrophytes and there is evidence of wetland hydrology and hydrophytes on the site, the areas containing hydrophytes are considered wetlands, even if they do not support the formation of hydric soils (Exhibit 6).

Even if one concludes that the LCP excludes “vernally wet areas” that do not have hydric soils from its definition of wetlands, there is some question as to whether the areas on the Beachwood site would fit into that exception. First, the LCP exclusion is limited to areas that are “vernally wet.” This phrase is not a defined term either in the LCP or in the wetland scientific literature. Two similar or related terms may be found in the literature: vernal ponds (or pools) and seasonal wetlands. Vernal ponds are a specific habitat type that supports unique flora and fauna. The wetlands on the Beachwood site do not support any vernal pond species and none of the data in the biological report identifies vernal ponds on this site. The other appropriate term that may include “vernally wet areas” is “seasonal wetlands.” A seasonal wetland is an area that is wet during the rainy season and dry during the remainder of the year. By using the phrase “vernally wet” rather than the more commonly used term “seasonal wetlands,” the City’s LCP may be distinguishing between seasonal wetlands and “vernally wet areas.” Thus, the Commission believes that, in using this phrase, the City’s LCP may be identifying a sub-category of seasonal wetlands.

The term “vernal” means “of or relating to the spring.” Thus, the phrase “vernally wet areas” applies to areas that are wet only during the spring. If the area is wet at times other than the spring but not wet for the entire year, it would be a seasonal wetland. In this case, the City’s record contains evidence that the area was wet in February, which is winter and not spring. The City hired Terry Huffman and Associates to conduct a preliminary wetland delineation on the site and during two site visits in February 1999 (February 5 and 28, 1999), the consultant documented water ponding on these areas. Since there is evidence that the wetland areas pond water prior to the spring season, the Commission finds that there is a substantial question whether the wetlands on this site are excluded from the LCP definition of wetlands because they are wet for periods longer than the spring months, and thus may not fall within the definition of “vernally wet” areas.

In addition, even if one accepts the conclusion that the area is vernally wet, the Commission believes that there is substantial evidence in the record to indicate that it is premature for the City to conclude that the areas do not contain hydric soils. According to Appellants Ferreira and O’Brien, the applicant has affected the nature of the soils on the site by the importation of fill material and by regular disking. In addition, the City hired LSA consultants to evaluate the hydric soil question. In a letter dated January 24, 2000, the consultant stated that consideration of hydric soils on the “site is problematic and that hydric soil conditions could be present despite a seeming lack of visual soil indicators. “ The letter provides an analysis of the unique conditions of the property and why hydric soils may be present despite the lack of visual evidence. The applicant’s consultant and Stephen Faulkner, Ph.D., wrote several letters refuting issues raised by LSA. It appears from the debate that there is a question of the nature of soils on the site. In light of the substantial alteration of the soils on the site, it seems that there may be support for LSA’s arguments. Thus, the Commission finds that there is a substantial issue with respect to the City’s conclusion that the soils on the site are not hydric, and are, therefore, under its interpretation of the LCP, excluded from the LCP definition of wetlands.

In conclusion, the City's approval of the coastal development permit did not protect several of the habitat areas on the Beachwood site because the City concluded that, because these areas are vernal wet areas that did not include hydric soils, they are not wetlands. This interpretation of the LCP definition of wetlands is not supported by the City's analysis or the definition of wetlands contained in the Coastal Act and its implementing regulations. Because these areas are wetlands under the Coastal Act and its implementing regulations and there are significant questions as to the vernal nature of the hydrology and the hydric nature of the soils, there is a substantial issue with respect to the identification of wetlands on the project site consistent with provisions of the certified LCP.

e. Uses In Wetlands

Inaccurate exclusion of wetland areas on-site raises the substantial issue that there may be additional areas on the site that should have been subject to use limitations and standards pertaining to wetlands and buffers.

The appellants contend the approved project would fill wetlands. In addition to the subdivision, the approved project includes the construction of houses, roadways, and other physical development related to this subdivision. Because the City determined that the habitat areas on the site are not wetlands under the LCP, its approval of the coastal development permit does not contain findings that explain how the approval of fill in wetland areas is consistent with the restrictions of LUP Policy 3-4 regarding permitted uses in sensitive habitat areas, including wetlands, and Policy 3-9, (Permitted Uses in Riparian Corridors). Policy 3-4 only allows "resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats."

The City's approval of the project does not demonstrate, as required by LCP Policies 3-4 and 3-9, that the approved uses (new residential structures and roads) in the wetland and riparian areas are either "resource-dependent" or "will not have a significant adverse impact in sensitive habitats," nor are there any alternatives discussed or any substantiated findings that "no feasible or practicable alternative exists." There are no findings supporting the City's approval of the project. The adopted resolution states that the Court mandated the approval of the coastal development permit but does not demonstrate the approved project's consistency with the certified LCP.

Therefore, there is not a high degree of factual support for the City's decision to approve the project as consistent with certified LCP Policy 3-4 or 3-9. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding permitted uses in wetlands.

f. Uses in Buffer Areas

LUP Policy 3-11(c) designates a 100-foot buffer zone for wetlands, and Policy 3-12 limits uses in the buffer areas to the same uses permitted in riparian corridors (see Uses in Wetlands discussion above) and also prohibits the creation of any "new parcels ... whose only building site is in the buffer area." The approved project plan

shows the construction of houses and roads within 100 feet of potential wetlands. Furthermore, those lots that contain potential wetlands do not include buffers for those wetlands. It is not evident from the City's approval how these roadway and residential lot intrusions into potential wetland buffer areas are allowable given the restrictions of Policy 3-12, especially regarding the intrusion of residential lots.

Therefore, there is not a high degree of factual support for the City's decision to approve the project as consistent with certified LCP Policy 3-11. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding permitted uses in buffer areas.

3. Visual

a. Contentions

Appellants Wan and Desser maintain that:

The approved project includes construction of a sound wall and houses that would restrict views of scenic coastal mountains from Highway One and degrade the visual character of the area.

Appellants Ferreira and O'Brien contend that the sound wall would substantially decrease the view of coastal foothills in manner inconsistent with the Half Moon Bay LCP.

b. LCP Standards

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

Policy 7-5

All new development, including additions and remodeling, shall be subject to design review and approval by the City Architectural Review Committee.

Coastal Act Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

Zoning Code Section 18.37.020(B) (1)

Visual Resource Areas within the City are defined as follows:

...

Scenic Hillsides which are visible from Highway One and Highway 92.... These areas occur include (sic) hillside areas above the 160 foot elevation contour line which are located:

1. *East of the proposed Foothill Boulevard, comprising portions of Carter Hill and Dykstra Ranch properties.*

Zoning Code Section 18.37.030 (B):

Development within the Highway One Corridor ... where existing permits or development does not exists. In general, structures shall be:

1. *Situated and designed to protect any views of ... scenic coastal areas. ...*
4. *Set back an appropriate distance from the Highway One Right-of-Way....*
5. *Designed to maintain a low height above natural grade, unless a greater height would not obstruct public views.*

c. Discussion

The Dykstra Ranch area is the site of the Ailanto subdivision and is located just east of the project site. The Half Moon Bay LCP identifies the portion of the Dykstra ranch above the 160-foot contour as a scenic area. This scenic area is visible from Highway One east of the Beachwood subdivision site. The City's conditions of approval for the development require the construction, on the Beachwood site, of a sound wall and a five-foot vegetated buffer between Highway One and the wall. These features may block views of the scenic coastal area identified in the Zoning Code, inconsistent with the zoning policy that protects those views. The City's approval is not supported by an analysis of the potential impacts of the sound wall on these protected views.

In addition, the approved sound wall would be the first structure of this type in this portion of the City. Although there is a sound wall in the southern part of the City (approximately 2.5 miles south of the Beachwood site), there are no sound walls on Highway One in the area of the Beachwood subdivision. Thus, the character of the area around the Beachwood site, as viewed from Highway One, is not affected by existing sound walls. The construction of the new sound wall at the Beachwood site would change the character of that area as viewed from Highway One. Section 30251 of the Coastal Act (which is incorporated into the LCP by LUP policy 1-1) requires new development to be consistent with the character of the surrounding area. The City's approval is not supported by an analysis of the wall's impact on the character of the surrounding area, and thus, raises a substantial issue with respect to the project's consistency with the visual policies of the LCP.

Additionally, the City's resolution for approval for this subdivision includes the construction of 80 houses. That approval requires the residential house to meet the building heights and setback requirements of the R-1-B1 of the zoning regulations in

the City's Zoning Code. The zoning regulations would allow a 28-foot structure within 25 feet of Highway One. Development of that height with only a 25-foot setback would block views of scenic coastal areas. The City's approval is not supported by an analysis of the impacts of the houses on these protected views.

Section 30251 of the Coastal Act, which the City incorporates into its LCP by LUP Policy 1-1, also requires that new development be sited and designed to be visually compatible with the character of surrounding areas. To implement this Coastal Act section, LUP policy 7-5 requires the City's Architectural Review Committee to review new development. As stated above, the City's approval of the subdivision allows for the construction of 80 houses. However, the coastal development permit application does not include plans for these residential units and the permit does not require review of the plans by the Architectural Review Committee as required by the LUP.

In conclusion, the approval of the subdivision, which includes the construction of a sound wall and 80 houses may significantly interfere with and degrade views from Highway One of coastal hills to the east. The local record for the City's approval does not include an evaluation of this potentially significant impact as required by zoning regulations 18.37.030 (B) (1), (4), and (5) and Coastal Act Section 30251, which is incorporated into the City's LCP by LUP Policy 1-1. Therefore, the Commission finds that the City's approval raises a substantial issue of the approved development's consistency with the LCP's visual policies and standards.

4. Water Quality

a. Contentions

Appellants Wan and Desser maintain that:

The City's approval does not require this project to be consistent with [water quality] policies [of the LCP]. The approved project would increase runoff from the site and does not include any measures to minimize long-term non-point source pollution.

b. LCP Standards

LUP Policy 4-9

All development shall be designed and constructed to prevent increases in runoff that would erode natural drainage courses. Flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that to the undeveloped land. ...

Coastal Act Policy 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other

means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

c. Discussion

The approved project would significantly increase the amount of impervious surfaces in the area by adding new roads, driveways, patios, roofs, and other hard-surfaced features to an undeveloped site, thereby increasing the rate and volume of storm water run-off from the site. This increase in rate and volume of storm water has the potential to result in flooding and erosion. The project would also significantly increase non-point source pollution, both during construction and after completion of the project. This increase in non-point source pollution has the potential to adversely impact water quality in the ocean and Pilarcitos Creek, which flows near this project (approximately ¼ mile). Further, the increases in runoff and non-point source pollution could adversely affect wetlands located on the project site. The stormwater and non-point source pollution impacts could potentially modify the hydrology of the wetland, degrade water and sediment quality within the wetlands, and degrade the habitat value of the wetland.

The approved project includes a condition requiring the applicant, as part of the Final Map submission, to submit a drainage report and grading and erosion/dust control plans for the approval of the City engineer. The grading and erosion and dust control plans must provide for winterization of the project site and comply with Chapter 14.24 of the Half Moon Bay municipal code, a local zoning provision that is not part of the certified LCP. These local zoning requirements manage the volume of stormwater flows but do not regulate the quality of the water. In addition, the grading and erosion/dust plans protect archaeological resources and reduce temporary erosion impacts from construction. However, they do not provide for long-term management of non-point source pollution.

The City's LUP Policy 4.9 addresses storm water runoff by requiring that flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that of the undeveloped land. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Section 30231, which require that new development protect the biological productivity and quality of coastal waters and to control runoff.

The City's approval does not require the project to comply with these water quality requirements. As described above, the conditions attached to the City's permit address drainage capacity and storm water volume, but do not completely address non-point source pollution issues. The City's approval does not require this project to be consistent with these policies. The approved project would increase runoff from the site and does not include any measures to minimize long-term non-point source

pollution. Therefore, the Commission finds that the City's approval of the project raises a substantial issue of consistency with the water quality policies of the LCP.

G. Appellants' Contentions That Do Not Raise Substantial Issue

1. Availability Of Services

a. Appellants' Contentions

Appellants Wan and Desser contend the City's approval of the subdivision is inconsistent with the Half Moon Bay LCP because the City failed to determine if there is adequate water supply to support the subdivision.

b. Analysis

The City's coastal development permit application file contains a "Will Serve Letter" from the Coastside County Water District (CCWD). This letter shows a commitment by the water district to serve this development. Although the City's approval did not include findings to support this conclusion, there is evidence in the record to demonstrate that, there is adequate water to support this subdivision.

c. Conclusion

Therefore, the Commission finds that the appellants' above-referenced contention does not raise a substantial issues of consistency with the certified LCP provisions regarding the availability of services with respect to water delivery.

H. Appellants' Contentions That Are Not Valid Grounds For An Appeal.

1. CEQA Compliance

a. Appellants' Contentions

Appellants Ferreira and O'Brien contend the City failed to comply with CEQA in approving the project.

b. Analysis

This contention is not a valid ground for appeal. The Commission's appellate jurisdiction is limited to the grounds described in Section 30603(b). Consequently, for appealable development that is not located between the first public road and the sea, the Commission considers only whether the appeal raises issues of consistency with the certified LCP. These are not the grounds asserted by the appellant. Instead, the appellant cites an alleged inconsistency with the California Environmental Quality Act.

c. Conclusion

Therefore, because the appellant's contention fails to identify issue of consistency with a provision of the certified LCP, the Commission finds that the appellants'

above-referenced contention does not constitute a valid basis for appeal of the project.

IV. INFORMATION NEEDED TO EVALUATE THE ORIGINALLY PROPOSED PROJECT DE NOVO

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo hearing to a subsequent date. The de novo portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering de novo has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request from the applicant information needed to determine if the project can be found to be consistent with the certified LCP.

Significant issues concerning the conformity of the proposed project with the policies of the certified LCP remain unresolved. Following is a discussion of the information needed to evaluate the project in a de novo recommendation to the Commission. Other issues may arise prior to or during the de novo hearing.

A. Habitat Analysis

1. A complete and updated survey of the site for the presence of San Francisco Garter Snakes and the California red-legged frog. The Survey should be designed in consultation with the U.S. Fish and Wildlife Service. The Survey should include an evaluation of the site for habitat for these species in accordance with the U.S. Fish and Wildlife Service's approved protocols.
2. A survey of the site for raptors and evaluation of the site's raptor nesting, roosting, and foraging use and potential.
3. An updated delineation of wetland indicators on the project site. The delineation should include enough data points to establish the size and extent of any potential wetlands on the site. The design of the delineation should be prepared in coordination with the Commission staff biologists.
4. A biological report on the habitats within 200 feet of the project site.

B. Visual

1. Engineering, architectural, and construction plans for the residential units, roads, and other utilities.

2. Construction plans for the sound wall, showing the wall's height and location.
3. Analysis of the project's impacts on views from Highway One looking east towards the hills. The analysis should include photographs of the area with simulated houses, utilities, and sound wall.

Without the above information, the Commission cannot reach a final de novo determination concerning the proposed development's consistency with the certified LCP.